

to Congress by January 31, concerning the commercial radio industry's compliance.

Although many of the Bill's matters appear to be elementary and quite basic, the premise here is when former rational broadcasting companies are permitted to become goliath national mega-corporations, greed, community apathy, and non-ethical conduct, distort top executives morals and values to dishonor hard working staff members and foster wayward beliefs that money and lies will cover a multitude of public welfare, company stockholder, and Commission transgressions. Justice is designed to be blind so as to treat all without prejudice, not because legality cannot see past the well endowed. Hodson will now continue forth and share portions of the Congressional Record regarding Senator Feingold's position on the Bill's creation and introduction.

On June 13, 2002, the Congressman addressed the Senate floor, "Mr. President, I rise today to voice my concerns about the concentration of ownership in the radio and concert industry and its effect on consumers, artists, local businesses, and ticket prices. I...wanted to make my colleagues aware of the seismic changes that have taken place...following the passage of the Telecommunications Act of 1996. While I opposed this act because of its anticonsumer bias, I did not predict that one provision would have caused so much harm to a diverse range of interests. The provision I am referring to is the elimination of the national radio ownership caps and relaxation of local ownership caps, which has triggered a wave of consolidation and caused harm. This change was not beneficial to consumers or local radio station owners or broadcasters. It simply led to a number of national super radio station corporations that now dominate the marketplace, and allegedly engage in anticompetitive business practices. The concentration levels of radio station ownership, both across the United States and in most local markets, is staggering. Today, for the contemporary hit radio/top 40 formats, four radio station groups - Chancellor, Clear Channel, Infinity, and Capstar - just four control access to 63% of the format's 41 million listeners nationwide. For the country music format, the same four groups control access to 56% of the format's 28 million listeners. The concentration of ownership is even more startling when we look at radio station ownership in local markets. Four radio station companies control nearly 80% of the New York Market. Three of these same four companies own nearly 60%

of the market share in Chicago. In my home State of Wisconsin, four companies own 86% of the market share in the Milwaukee radio market. The list continues in almost every market across the United States. The concentration of radio station ownership by a few companies is mind boggling, and its effect on consumers, artists and others in the music industry is cause for great concern. Many of the same corporations that own multiple radio stations in a given market wield their power through their ownership of a number of businesses related to the music industry. For example, the Clear Channel Corporation owns over 1200 radio companies, more than 700,000 billboards, various promotion companies, and venues across the United States. Also, ...in 1999, Clear Channel bought SFX productions, the Nation's largest promotion company. After I began looking into the consolidation trends, I was taken aback by the diverse range of people that expressed concerns about the effects of concentration and consolidation. Concert goers talk all the time about higher ticket prices. Broadcasters, artists, and others in Wisconsin and across the country have told me about reduced diversity and local input in the music industry. And local businesses have spoken about anticompetitive behaviors that have put them on an unfair playing field. As corporations buy stations in the same market, they combine newsrooms and reporters and share playlists and radio personalities - all with the same effect: less choice in music and less information for consumers. Radio airwaves are public property...Congress and the Federal Communications Commission have tried to ensure that this medium serves the public good, but limiting access to information and diversity on the radio does not achieve this. I have also heard concerns from artists and radio stations about how the vertically concentrated radio corporations leverage their market-power to shake down the music industry in exchange for playing their music. I am very troubled by these allegations. If true, they mean that artists that can't, or don't, pay these independent promoters will not be able to get access to the airwaves. I am continuing to investigate these allegations of a new shakedown, but if they are true, this practice should be prohibited. Finally, I am deeply disturbed about concerns that have been voiced by individuals and local businesses - promoters, radio station owners, and artists - that have been forced out of the business or have been put on an

unfair playing field as a result of the concentration of market power caused by the deregulation of the 1996 act. These are local promoters and businesses who have succeeded through economic downturns, recessions and many other challenging times. But when placed on an unfair playing field, they are being pushed out of the market. This is about the very freedom of radio as a medium. Radio is one of the most important media we have for exchanging ideas and expressing our creativity. But that free exchange of ideas often isn't free anymore - if you want to get played, often it's going to cost you. And if you can't afford it, then you might not get heard at all. Being able to hear a variety of voices is fundamental to a free society. Concentration in the radio industry is diminishing the number of voices that get heard. And that risks diminishing our freedom. It isn't just about who is talented, and who deserves to be played. It is about a shakedown, and that is just unacceptable for the industry, for the artist, and for all of us who listen. In the coming weeks, I will be introducing legislation to address the concerns about concentration and anticompetitive practices that have resulted from the Telecommunications Act. I hope my colleagues will join me in this effort. Mr. President, I just want to alert my colleagues to this trend, and we will introduce legislation to deal with it. I am convinced the complaints I have heard from such a wide variety of Wisconsinites are the same concerns being raised in all the States in this country, and I look forward to submitting a proposal and a bill to my colleagues. I yield the floor." (S5469-70)

Exhibit Number 1,<sup>21</sup> crafted by the American Federation of Musicians (AFM), American Federation of Television and Radio Artists (AFTRA), Association for Independent Music (AFIM), Future of Music Coalition (FMC), Just Plain Folks, Nashville Songwriters Association International (NSAI), National Association of Recording Merchandisers (NARM), National Federation of Community Broadcasters (NFCB), Recording Academy, and the Recording Industry Association of America (RIAA), presents multifaceted topics including: Pay for Play and Independent Radio Promotion, Impact of Widespread Industry Consolidation, Vertical Integration of Radio

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<sup>21</sup>*Joint Statement on Current Issues in Radio*, May 24, 2002, 148 Cong. Rec., S5470-71 (June 13, 2002)

Owners, and Community Radio. Since these particular issues are examined adequately in other sections *supra* and *infra*, they will be neglected here.

When presenting the Bill on June 27, 2002, Senator Feingold entered these comments into the Congressional Record, "Mr. President, I rise today to introduce legislation that will promote competition in the radio and concert industries. This legislation will begin to address many of the concerns that I have heard from my constituents regarding the concentration of ownership in the radio and concert industry and its effect on consumers, artists, local businesses, and ticket prices. A few weeks ago, I began discussing with my colleagues a number of concerns that I have been hearing from Wisconsinites. Anti-competitive practices are hurting local radio station owners, local businesses, consumers, and artists. During the debate of the 1996 Telecommunications Act, I joined a number of my colleagues in opposing the deregulation of radio ownership rules because of concerns about its effect on consumers, artists, and local radio stations. Passage of this act was an unfortunate example of the influence of soft money in the political process. As my colleagues will recall, I have consistently said that this act was bought and paid for by soft money. Everyone was at the table, except for the consumers. We have enacted legislation to rid the system of this loophole in campaign finance law, but we must also repair the damage that it allowed. In just 5 years since its passage, the effects of the Telecommunications Act have been far worse than we imagined. While I opposed this act because of its anti-consumer bias, I did not predict that the elimination of the national radio ownership caps and relaxation of local ownership caps, would have triggered such a tremendous wave of consolidation and harmed such a diverse range of interests. This legislation did not simply raise the national ownership limits on radio stations, it eliminated them all together. It also dramatically altered the local radio station ownership limits through the implementation of a tiered ownership system that allowed a company to own more radio stations in the larger markets. When the 1996 Telecommunications Act became law there were approximately 5,100 owners of radio stations. Today, there are only about 3,800 owners, a decrease of about 25%. Concentration at the local levels are unprecedented. At the same time that ownership

of radio stations has become increasingly concentrated, some large radio station ownership groups have also bought promotion services and advertising. I have been hearing from people at home in Wisconsin, from radio station owners, artists, broadcasters, and concert promoters who are being pushed out by anti-competitive practices, practices that result from an increasingly concentrated market. I am very concerned that these levels of concentration are pushing independent radio station owners and concert promoters out of business. And I am concerned that a few companies are leveraging their cross-ownership of radio, concert promotion, and venues in an anti-competitive manner. My legislation addresses these concerns by prohibiting any entity that owns radio stations, concert promotion services, or venues from leveraging their cross-ownership in anti-competitive manner. Under this proposal, the FCC would revoke the license of any radio station that uses its cross ownership of promotion services or venues to prevent access to the airwaves, venues, or in other anti-competitive ways. My legislation will also ensure that any future consolidation does not result in these anti-competitive practices. It will strengthen the FCC merger review process by requiring the FCC to scrutinize the mergers of large radio station ownership groups to consider the effect of national and local concentration on independent radio stations, concert promoters and consumers. At the same time, it will also curb future local consolidation by preventing any upward revision of the limitation of multiple ownership of radio stations in local markets. It will also close a loophole that currently allows large radio ownership companies to exceed the cap by 'warehousing stations' through a third party. In these arrangements, large radio owners control a station through a third party, but the stations are not accounted for in their local ownership cap. Finally, my legislation will also address many of the problems created by the consolidation in the radio industry, such as the new forms of payola. This legislation will require the FCC to modernize the Federal payola prohibition to prevent these large radio station ownership groups from leveraging their power to extract money or other consideration from artists, such as forcing them to play concerts for free. Radio is a public medium and we must ensure that it serves the public good. The concentration of ownership, in the radio and concert industry, has caused great

harm to people and businesses that have been involved in and concerned about the industry for generations. It also harms the flow of creativity and ideas that artists seek to contribute to our society. This concentration does a disservice to our society at every level of the industry, and it must be addressed. I urge my colleagues to join me to cosponsor this legislation to help to restore competition to the radio and concert industry by putting independent radio stations and concert promoters on a level playing field in the marketplace. This will help promote competition, local input, and diversity, and promote consumer choices.” (S6252-53)

Senator Russ Feingold correctly has a foundational grasp on the deficiencies confronting radio broadcasting, because of unwarranted and unjustified national and local broadcast consolidation via the 1996 Act, plus conglomerate vertical integration. When federal lawmakers fall asleep at the wheel by allowing themselves to be blinded by oncoming vehicle headlights and mesmerized by the amount of daily traffic, they will eventually be awakened by the passengers screaming profusely that the drivers have carelessly careened off course from the paved highway. In this case, the foreseeable and preventable accident has already occurred and the ambulatory arrival of remedies are way overdue.

The only major disagreement I could find flawed in the Senator’s argument is his belief about acquiring distribution mechanisms, the broadcast spectrum. He asserts that the airwaves are achieved without any capital expenditure, erroneously defined as *Government gratis*. Maybe in ancient radio days of old, when broadcasters worked on-the-air for the passion and art of the medium, regardless of the pay scale or license resale value. Everybody in the business is familiar with current backdoor bureaucracy, where clandestine contracts cover assignment and transfer applications. The Commission has not been vigilant over the last few decades, basically rubber-stamping these type of license approvals, just to move the application paperwork and collect the filing fees. Any new viable broadcast allotments are subject to auction, which to Hodson’s knowledge, does not equate to free. So whether an independent commercial entity buys or builds, complementary radio or television broadcast licenses just do not exist anymore.

## **V. Commentators Critique**

Since this submission's primary nature is to reply, Hodson diligently responds by investigating the massive record developed in each of the four numbered dockets, commencing with MM Docket No. 00-244, Definition of Radio Markets, and concluding with MB Docket No. 02-277, the 2002 Biennial Regulatory Review. Because of the sheer number of various commentators in each proceeding, Hodson cannot formally service each entity addressed or cited, and will generally only highlight brief viewpoints worth refocusing the Commission's attention on for emphasis. Hodson will just support comments on agreed party issues found within the Commission's Electronic Comment Filing System (ECFS), and will neglect amplified Commission or Hodson repositionings, duplicated docket submissions, or extension of time filings which do not specifically address any issues. Hodson shall simplify reference quotations by presenting an uncomplicated ECFS date and page number format.

### **MM Docket No. 00-244**

#### *Definition of Radio Markets*

This Docket originated with a 23-page *NPRM* that included several appendices and Commissioner statements in early December 2000. *NPRM* examples showing how ludicrous the loopholes truly are with current market definition methodology include: stations A, B, C, and D scenario in ¶¶3-4 (pp.2-3); Wichita, KS and Ithaca, NY in ¶5 (page 3); Pine Bluff, AR in ¶8 (page 4); and the Youngstown-Warren, OH illustration in Appendix B (pp. 12-18). At that time, Commissioner Susan Ness stated "The Commission's current method of defining local radio markets suffers from a number of flaws...often leading to uneven results that bear no resemblance to market realities." (page 20). Commissioner Gloria Tristani mentioned her concern over this issue stems from August 1998, and noted "[T]hat the Commission's rules prevent a meaningful assessment of market concentration because they do not apply a consistent definition

of radio ‘market’...the practice of treating any station whose principal community contour intersects with any mutually overlapping station in the proposed combination as being in the same ‘market’ can lead to unrealistic results. [O]ur rules denied justice to...[r]eal listeners in real communities [that] have been harmed by a consolidation of the airwaves that should not have been permitted to take place.” (pp. 21-22). Commissioner Harold W. Furchtgott-Roth concurred “...that it makes no sense to count stations as in the relevant market for the denominator but not the numerator of the 202(b) calculation.” (page 23).

As expected, only corporate broadcasting conglomerates (Viacom, Citadel, Entercom, Clear Channel, Cumulus, Entravision, etc.), through their attorneys, strongly supported the status quo of radio market definitions. Instead of offering practical or alternative classification remedies, these entities were much more concerned about protecting their assets, preferring to address issues such as grandfathering group combinations already acquired, processing transfer or control applications under existing methodologies, and discussing divestiture opposition tactics or exit strategies. Even dominant, multi-station, regional companies, like MBC Grand Broadcasting (2/26/01) in the Grand Junction, CO area, Great Scott Broadcasting (DE, MD, NJ, etc.), New Wave Broadcasting (CA & HI), Noalmark Broadcasting (AR & NM) (three party joint reply, 3/13/01), all took this similar stance of the larger consolidated licensees.

NextMedia Licensing (2/26/01) surrounded a simple point in its Chicago MSA example that needs further expounding. They state, along with acknowledging different FM classes, power, and HAAT (height above average terrain) of many market stations, that “[T]ransmitter sites...are distributed throughout an area approximately 88 miles long and 98 miles wide. Some are as far as 102 miles apart.” (page 5). Aurora Communications (2/26/01) pleads another story, claiming “...90 miles...is hardly likely to be considered part of the same market no matter whose definition of ‘market’ is used.” (page 22). Nevertheless, this may not be uncommon in the top 10 or 20 radio markets, because broadcasters that are close to a major market would unfortunately rather associate themselves with Chicago than say, their true licensed community of

Elgin or Joliet, IL. Perhaps under these congested conditions, a “fringe” station status could be conferred to classify facilities over 75 miles distant from the center coordinates of the major city, yet due to certain signal or terrain characteristics, these stations are received and heard within the larger adjacent market. Another Arbitron argument seems to revolve around either its non-surveyed stations or markets, and fluctuating listener numbers or station containments. The Commission should make clear to parties that Arbitron, BIA, or related services are only being utilized as a benchmark to commence or complete the F.C.C.’s *fixed* market definition data base.

Rick Murphy (2/26/01) and Jimcar, Inc. (3/13/01) present the Commission with a ridiculous request to include SDARS 100 plus channels from each of the two service providers, XM and Sirius, into the total radio station number within a market. Adding to this progressive paranoia, Mr. Murphy radically recruits (via e-mail) both Kurt Browall, GM of KTRZ (Riverton, WY) Radio, and Wyoming Senator Michael B. Enzi (6/4/01). Hodson contends that this proposal would wastefully make every market area fall into the current top tier of 45 or more radio stations, both nullifying §202(b)(1) of the 1996 Act and strangling local competition and diversity in all markets. As a humorous human side note, Hodson enjoyed the funky font and psychedelic phrasing of Radio Newburyport (2/28/01), relating SDARS (cue in classic Twilight Zone theme music) to “...the arrival of radio from space.” (page 4).

Casey Torgerson, member and author of the Americans for Radio Diversity (“ARD”)(3/13/01) submission, had the most reasonable, rational, and realistic reply presentation under this docket number. ARD ascertains, as has Hodson in Section IV supra, that expected Congressional intent has completely strayed far away from the anticipated legislative results. In addressing the station combination grandfather issue, ARD notes, “Forced divest[iture]s in these cases would be no more disruptive than divest[iture]s required previously by the Commission in certain markets when certain large national station owners have merged.” (page 2). In responding to Alan Brill’s (Brill Media, 2/26/01) comments, ARD keenly states, “...the fundamental difference [is] that a newspaper cannot buy up all the paper in an area, in the way that a radio group could conceivably purchase all available frequencies and have a total and

sustained *monopoly on free audio broadcasting.*”(italics added)(page 2). Jarad Broadcasting (2/8/02) presented a strong argument of why contour overlap methodology in ownership attribution has much to be desired, especially over water and with current daisy chain loopholes, in their Petition to Deny. Main Street Broadcasting (3/27/02) had the same salt water/AM propagation anomaly as their primary position on contour overlap loopholes. The Minority Media and Telecommunications Council (“MMTC”)(3/21/02) presented a very lengthy filing that contained worthy positions on minority ownership and education, industry employment practices (pp. 62-63), viewpoint diversity, unfortunate consolidation impacts, SDARS and Internet radio (pp. 31-32), discriminatory case citations, divestiture provisions to assist minority businesses, and various other regulation regrets, remedies, and remorse. Hodson must draw the line at supporting MMTC’s channel bifurcation and “Free Speech Radio” proposal. This would amount to little more than unnecessary time brokerage sanctions of radio broadcast spectrum, and would fly as well with voluntary group owners as a kite with no wind. The Caucus for Television Producers, Writers & Directors (7/1/02) ex parte notice, outlining a late June 2002 pair of meetings with the Commission, stated “Consolidation of networks and studios into vertically and horizontally linked media titans has devoured competition, destroyed independent entrepreneurs and diminished diversity of supply.” (page 2).

### **MM Docket No. 01-317**

#### *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*

ECFS filings after the docket coupling in this early November 2001 *NRPM* were mostly mirrored between both search sets, so Hodson will address these docket duplicates just under one subsection or the other. First up is Joe Smith, a.k.a. “Playboy J”, Assistant MD at WLJM (Lima, OH) Radio (11/21/01). Although his e-mail style is informal and raw, Mr. Smith nevertheless points to Clear Channel’s over dominance in the Phoenix and Denver markets, which veterans already know as just the tip of the

glacier. Moreover, Joe mentions, "Clearchannel is taking jobs away from people like myself and other jocks almost every day...due to the fact that all radio stations...run by an automated [voice track] system that is now starting to get noticed by the public as being 'NON-LOCAL'. Clearchannel has already been under the gun for contests that they have that run from state-to-state misleading listeners." (page 1). He relates a short anecdote that humbly reminded Hodson of its modest beginnings, then concludes by stating tougher regulations will result in more localized and fun radio for communities and the people.

Norm Andresen (11/23/01) from MI, summed his feelings up with one sentence. "Please do not do away with ownership caps on how many broadcast stations can be owned by one company in a single market." Nickolaus Leggett (11/14/01), a VA Ham Operator (N3NL) and fellow electronics technician, comments "...that small stations are more open-minded than large stations, more likely to take a risk on covering unusual topics or providing programming outside of the mainstream." (page 1). "[C]onsolidation of the radio broadcasting industry is driving out this open-mindedness in exchange for a standardized music-box type of programming." (page 2). "Restructuring full-power broadcasting...would establish a new balance where diverse community interests would have access to broadcasting. (page 3). Mr. Leggett partners with Don Schellhardt (3/27/02) of CO, "...both concerned citizens, who see dangers for representative democracy in the increasingly 'consolidated' control over the free flow of ideas and information in radio & TV broadcasting." (page 1). The Amherst Alliance ("AA") (3/27/02), a Net-based, nationwide citizens' advocacy group, authored by the above Mr. Schellhardt and comprised of thirteen unique entities, is quite concerned that the local ownership cap "floodgate" is currently the last line of defense before unrestricted consolidation would occur.

People to People Ministries (12/28/01) of TX, "...speak in respect to the impact multiple ownership has had specifically on this ministry and the thousands of disenfranchised listener-friends and supporters across America who have suffered as a result." (page 1). "[W]e do not feel that the current rules concerning multiple ownership of radio stations are in the public interest." (page 2). Eric Bueneman

(2/11/02), a.k.a. E. B. Stevenson, a St. Louis, MO broadcaster, shares "...that the present rules have created an anti-competitive environment in commercial broadcasting that has resulted in the loss of over 11,000 jobs in the last five years, and a switch to unreliable automation systems and voicetracking from very reliable on-air talent." (page 1). Mr. Bueneman continues by covering diverse topics such as ownership entry barriers, equal employment opportunities, on-air morals and religious beliefs, waning program creativity, lack of available industry positions, anti-competitive corporate practices and modern payola, national radio ownership limitations, AM stereo, IBOC-DAB, broadcast public service apathy, a St. Louis market breakdown, and his own radio career history. Although sometimes bitter and bias, this seven page submission still deserves a second Commission read, which Hodson earnestly recommends.

James Reese (2/25/02), an engineer from TX, comments "[A]ll the reasons historically used to limit the ownership of broadcast properties are just as valid today as they ever were." (page 1). "My engineering background exposes me to parts of the broadcast station not seen or clearly understood by most listeners. [M]any listeners do not realize that much of the programming they hear on radio does not originate from their local station. Indeed, in many smaller markets, there is no studio from which to originate programming. Modern automation systems enable radio companies to operate hundreds of small market stations from a single point without the listeners knowing no one is at the radio station. Even in larger markets, some dayparts are run on automation. Many listeners in the city where I live would be surprised that from 7PM to 5AM each day, there is no live person on the air on any of our radio stations." (page 2). "Public interest consideration must also include *access* to broadcast spectrum by potential owners. As ownership consolidated, station prices increased to obscene levels. The price of even small stations with little or no audience reached levels that precluded all but wealthy potential owners from purchasing them." (page 3). "[D]istant corporations are allowed to control station programming for communities where the owners have never lived or even visited. There is little innovative programming on radio today...[a] radio station should be more than a computerized juke box, and computer programs certainly can't provide the public with timely information in the

event of an emergency.” (page 4). Mr. Reese documents from his professional experience, the proliferation of automated programming in the Austin market, the many casualties computerization has caused, his plea for re-instituting national radio ownership limitations and tightening local ownership caps, plus revamping the broadcast license renewal process. Hodson recommends the Commission also give this brief five page filing another quick look.

Hodson would be quite amiss in critiquing commentators and then neglect mentioning the Office of Advocacy, U.S. Small Business Administration (“SBA”) (3/13/02). Their initial comments, authored by Eric Menge, were directed toward the Initial Regulatory Flexibility Analysis (IRFA), which Hodson observantly readdresses in Section VI, *infra*. After the Advocacy Office’s background and purpose highlights, the remainder remonstrated for Notice of Inquiry status for the ongoing *NPRM* proceeding, constantly admonished the Commission for not setting forth specific rules for public scrutiny, and further requested a supplemental IRFA at that time. A token exhortation was offered to promote a small business forum, immediately before their concise conclusion. SBA’s Advocacy Office filed reply comments (5/7/02), submitted by Shawn McGibbon, which supported the majority of small business positional concerns. “Advocacy agrees that radio broadcasting can be differentiated from other forms of media and that competition and diversity must occur within the radio broadcast market. Diversity of ownership encourages competition within the marketplace [and] is also important for diversity of viewpoints. The only way to truly ensure that a variety of viewpoints are presented is to ensure a variety of owners.” (page 4).

Gregg Zuelke (3/24/02), a fellow NV resident and broadcaster, submitted along with his comments, §202(a) and (b) of the Commission’s Rules, Arbitron Ratings (Market 127: Reno, NV) for Fall 2000, Spring 2001, and Fall 2001, a “station registration” breakdown of facilities within 100 miles of the Reno metro, a career overview, and several supporting articles for his opinion. “[I] do not feel that such a large ownership of radio stations - in general - is in the best interest of the public, including when it comes to technology development.” (page 10). “[S]ix of the studios -

at 1:30pm, were empty. Only three studios had a live broadcast running at this time. The rest were either on voice-track or satellite/network broadcast...I once called for a [sales] price quote from them, and nine station listings were sent by fax to the number provided. [B]ecause of consolidation - 20 stations, 4 owners, 3 buildings, added with automation and reduction in staffing.” (page 14). “The money is going somewhere, but it is NOT going into the local economy since there are few being paid anymore so to put the money out.” (page 20).

The Office of Communications, Inc. of the United Church of Christ (“UCC”) (3/26/02) advanced several aspects that make common sense. Within this 126-page document, there were many points worth quoting, yet it would be more practical just to quickly discuss UCC’s main arguments. Hodson agreed that diversity and competition have declined dramatically in many local radio markets, neither Internet radio nor satellite-delivered radio provide a substitute for local radio, a dramatic decrease in the number of independent owners has substantially affected the amount of source diversity available in many local markets, consolidation fails to increase programming choices and serves to inhibit new format growth, and extremely high levels of concentration exist in almost every local radio market. UCC provides various market, HHI, and format change studies to support their positions. Hodson firmly believes UCC’s expanded newspaper public notices are premature and perhaps even unnecessary at this time, while the 35/60 audience or advertising share standard is at odds with Hodson’s Section II position. Nevertheless, the latter viewpoint does have “bright-line” merit for uniform regulation and consistency that Hodson could compromisingly support. UCC’s reply comments (5/8/02) avow “...increased ownership consolidation has led in many cases to nearly identical programming in multiple markets instead of providing greater opportunity for diverse local content.” (page 17). “Radio ownership limits are particularly important because the lower entry costs for radio...provides a means for new entrants...who have less access to capital.” (page 19). UCC then joins with Black Citizens for a Fair Media, Civil Rights Forum, Philadelphia Lesbian and Gay Task Force, and Women’s Institute for Freedom of the Press (“UCC *et al.*”)(1/2/03) for united comments. “[L]imiting the number of stations

that can be commonly owned provides greater opportunities for minorities, women, and small businesses to own broadcast stations.” (page i). “[T]he public must have access to media outlets owned by different owners to ensure that a broader range of issues are covered and a greater variety of viewpoints can be expressed and discussed as is necessary in a democracy.” (page 9). “[T]he public lacks sufficient community-focused programming and opportunities for self-expression. Such a strong demand for LPFM highlights the public’s ongoing interest and need for local self-expression despite any proliferation of media outlets.” (page 15). “Large radio owners have streamlined operations by using automated programs and syndicated programming instead of deejays and locally-produced programming.” (footnote omitted)(page 27). “Common ownership of two television stations in the same market reduces the amount and variety of local programming because co-owned stations consolidate staff and resources that produce local information.” (page 40). “Eliminating the national television ownership rule would cause a dramatic restructuring of the television industry that could reduce the number of independent voices in local media markets across the country.” (page 49). UCC *et al.* also covers how other media outlets (i.e. newspapers, cable, DBS, Internet, and DARS) are not adequate substitutes for broadcast television, analyzes the “necessary in the public interest” phrase and First Amendment concerns in various current Commission Rules, and supports repeal of the “UHF Discount”. Out of all the lengthier pleadings, Hodson affirms UCC *et al.* numerous positions and recommends this submission should get seconds in the reread department, as it addresses diverse issues that the Commission’s staff have been grappling with for some time, yet is sensitive enough to examine and consider smaller broadcasting enterprises universally.

Jefferson-Pilot Communications (“JPC”)(3/27/02) brings to the Commission a good argument using the San Diego radio market as their example. JPC demonstrates, through data and references, how Clear Channel deliberately thumbs its nose at regulatory restrictions, even though they already “legally” control around 1,200 individual broadcast licenses. When is “enough” enough? Using border signals to up your overwhelming dominance within a market, if accurate, sets a very bad precedent

for not only blatant anti-competitive behavior, but disturbing disregard for the Commission's authority as well. The American Federation of Television and Radio Artists ("AFTRA")(3/27/02) shares that they have "...a uniquely 'inside' view into...how the changes in the broadcast ownership rules...have adversely affected diversity and competition in radio to the detriment of the public interest." (page 2). "The relaxation of the radio ownership limits has permitted group owners to dominate local markets and maximize economies of scale by reducing staff, cross-assigning journalists, and re-purposing the same material with the same editorial viewpoint for use in various different media outlets...they have no incentive to provide diverse and antagonistic points of view." (page 8). "When two or three companies control an overwhelming percentage of advertising revenue, it is much more difficult for the few independent stations in the market to compete for the remaining share of the advertising dollars in that market." (page 9). "With the consolidation of radio ownership since 1996, the local character of radio has largely vanished, there has been a sharp reduction in the amount and variety of regional distinctions in music broadcast over the radio, and certain anti-competitive business practices have taken hold in the music industry. Consolidation has resulted in the elimination of certain music formats from radio." (page 10). "As a review of Clear Channel's operations makes clear, its unregulated ownership consolidation in radio is destroying diversity and localism in music and is promoting anti-competitive market conditions." (page 15). "The current business practices of Clear Channel, made possible by deregulation and its resulting domination of local radio markets, are currently the subject of a number of anti-trust inquiries." (page 16). Clear Channel obviously wasn't on JPC's nor AFTRA's Christmas card list.

American Women in Radio and Television ("AWRT")(3/27/02) stated "[T]he Commission cannot and should not ignore the vitally important role that diversity of ownership plays in a local radio market, both in the obvious contribution to market competition and in its contribution to viewpoint and source diversity." (page 7). AWRT additionally attached excerpts from "Whose Spectrum Is It Anyway?", a December 2000 historical study from 1950 to present, prepared for the F.C.C.'s Office

of General Counsel by the Ivy Planning Group. The chronicled portion provided deregulation and consolidation effect findings and their despondent impact upon licensees and the public, with testimonials from various minority radio and television broadcast industry professionals. AWRT's follow-up (1/2/03) comments prompt "...the Commission to remember that...those most in need of viewpoint diversity are those most likely not to have access to the Internet, cable, DBS, and DARS. AWRT further submits that access to nationally available programming found on cable, DBS and the Internet has little impact on diversity at the local level. [C]ommon sense dictates that limiting the number of stations owned by a single owner in any given market will increase the number of owners in that market, thereby increasing the number of sources providing information and, thus, the level of viewpoint diversity." (pp. 7-8). "AWRT submits that the Commission should include only those local voices actually present in a market...[and] should not include any non-local programming provided by cable, satellite or Internet services as a market voice. In fact, AWRT does not believe any market source should count as a voice under the Commission's rules unless it is actually shown to carry local programming." (parentheses omitted)(page 8).

Davis Broadcasting (3/27/02) felt "The Commission should define local radio markets with the service area contours." (page 3). Footnote 3 (page 4) asserts Clear Channel operates nine stations in the Columbus region, and has acquired CP rights to a new FM to create ten within this "market". Davis then advanced a majority of his pleading to further analyze and expound on the Cumulus/Clear Channel fiasco, and its disturbing market makings in Columbus. Mapleton Communications (3/27/02) notes "[T]he ownership of other types of media locally allows a radio operator to assemble and maintain a larger sales staff, offer packages of different types of media, and utilize one type of media to promote another." (page 8). "In adopting any new radio ownership rule or procedure, the Commission must be careful not to place undue regulatory burdens on new entrants to the radio industry." (page 9). Dick Broadcasting (3/27/02) comments "The Commission now is presented with an opportunity...to craft revised rules that will add greater rationality to radio communications policy. [T]he Commission also should consider the adoption of policies that would not 'grandfather'

existing combinations [and] strongly consider the adoption of a policy requiring existing group owners' divestiture of non-compliant stations by a 'date certain,' not just upon any further assignment/transfer activity." (page 7). Idaho Wireless ("IWC")(3/27/02) asserts "...there is a growing body of evidence - as depicted in national news stories, congressional statements and FCC pleadings - documenting the extent to which certain radio group owners have [] gone to anticompetitive extremes." (page 2). "There now is ample evidence that the current rules - based on overlapping principal community contours...have not been effective in yielding rational results." (page 5). "IWC believes the FCC should lower the ownership limits in a single market and...restore the former three-year 'holding period' rule on the purchase and sale of a station." (page 8). North American Broadcasting ("NABCo")(3/27/02) testifies "It is the observation of these radio veterans that large groups are downsizing local staff - so they can run stations all over the country more cheaply - to the point that the quality of their local radio offerings are impaired." (page 11). "'Agri-business' has come to radio broadcasting, with an oligarchy of group owners, many of whose roots in broadcasting are shallow. In markets across the country, local radio, once dominated by locally-owned entities with dozens of years of broadcast experience, now is controlled by large, absentee owner licensees that operate nationwide chains of radio operations." (page 12). Blakeney Communications (3/27/02) reflects a rarity that "Citizens of the Laurel-Hattiesburg area see us on the street everyday and are able to communicate directly with the owners of our company their concerns and the issues and needs facing their communities." (page 1). An admirable aspiration that even Hodson has been earnestly praying for in its sole-proprietorship broadcast evolvement.

The National Association of Black Owned Broadcasters ("NABOB")(3/28/02) avouch, "One owner controlling many entertainment formats is positioned to exercise exactly the inordinate control over public discourse the local ownership rule is designed to prevent. Eight stations in eight different formats in one market, regardless of the specific formats, will never express opinions at odds with the views of the party controlling those eight stations." (page 7). "These two aspects of diversity [viewpoint and source] require the Commission to promote the ownership of broadcast facilities

by diverse owners, who have the potential to provide a diverse array of opinions on topics of importance to the American public.” (page 13). NABOB’s (5/8/02) reply submission clearly demonstrates that at least five broadcast conglomerates are boldly and rebelliously overstepping clearly drawn Congressional numerical caps, some in several local markets. NABOB depicted Clear Channel guilty in at least ten examples. Hodson must innocently inquire, why even bother to have specific ownership limits laws if they are not being enforced and followed? Congress and the Commission tirelessly toil to draft regulatory provisions that are blatantly and obviously disregarded by these offending overt entities that truly possess no care or concern for the average community citizen. NABOB then teams with the Rainbow/PUSH Coalition (1/2/03) to solidify their viewpoints. “For all of the talk about ‘better serving the public’ put forth by Sinclair and other proponents of further consolidation, the bare fact revealed by Mr. Smith’s statements is that increased consolidation means increased control of news by a small group of people.” (page 5). “[M]ore than half of the markets had an HHI above 3000, a level considered far beyond that of a highly concentrated market.” (page 9). NABOB then modifies its previous numerical limit offender showing, now stating that six group entities control nine licenses or more, in at least 11 different markets, without even considering the effects of covert LMA’s, TBA’s, or similar type of agreements (pp. 20-22).

Kol Ami Havurah (4/3/02), a LPFM applicant, attests “...that lifting the remaining ownership caps will not be in the public interest, will severely limit new [entrants] in the broadcast market place, and will severely limit radio diversity.” (page 1). Sam Brown (5/6/02), businessman, former station owner, and only reply commentator addressing Hodson’s original comments directly, avows “One of the clear patterns which emerges in the comments is that private citizens and those without a clear profit motive are almost unanimously asking for more restrictions on station ownership and the giants of modern broadcasting just happen to mysteriously take a very different view.” (page 1). “Most other observers including many broadcast employees and members of the listening public who choose to comment all seem to agree that the ‘quality’ and ‘diversity’ of radio has deteriorated.” (page 2). Radio One’s

(5/8/02) reply comments request “...that the Commission promote those aspects of diversity which will lead to ownership of radio facilities by a diverse set of owners.” (page 2). “Radio One further noted in its Comments that the 1996 Act similarly requires the FCC to identify and eliminate market entry barriers for small business owners, including minorities, and in so doing, to ‘seek to promote the policies and purposes of th[is] Act favoring diversity of media voices.’”<sup>22</sup> Ownership diversity, which invariably leads to greater viewpoint and source diversity, will reduce the risk that one radio group will have an inordinate influence on the free flow of ideas.” (pp. 4-5). The Future of Music Coalition (“FMC”)(5/8/02) replies, “Contrary to arguments that economies of scale would increase the diversity of radio programming, experience demonstrates that niche formats addressing significant but minority tastes have been abandoned as ownership concentration increases.” (page 1).

### **MM Docket No. 01-235**

#### *Cross-Ownership of Broadcast Stations and Newspapers*

Because of time and labor constraints, Hodson could not devote as much energy as needed to effectively do this subsection justice. In short, those entities (Tribune, Gannett, Media General, Liberty, Block, etc.) which have newspaper and broadcast properties already, either through F.C.C. waivers, rule relaxations, or lack of enforcement practices, are earnestly promoting regulation repeal of this particular statute, because then they could consolidate without concern or care. Reporters, writers, technicians, and many other different newspaper personnel share a vastly different perspective, relating experiences such as suppressed stories, bias bylines, and “synergies” of scale that have reduced or overburdened the company’s working staff,

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<sup>22</sup>Radio One cites §257 of the 1996 Act. ¶(a) Elimination of Barriers, references “market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services”, while ¶(b) National Policy, directs “In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.”

thus producing an inferior printed product with less competition, diversity, and localism for their general subscribers and readers.

**MB Docket No. 02-277**

*2002 Biennial Regulatory Review - Review of the Commission's Broadcast  
Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the  
Telecommunications Act of 1996*

Comments within this subsection shall be restricted to filings after September 23, 2002, or the date the re-recycled *NPRM* was released. Hodson noted a profusion of filings after late September were only synopses of various oral ex parte meetings that usually lacked material in which to comment. In January 2003, there was a constant barrage of short comments from individuals, which could not be adequately responded to in due time. Some were certainly not loquacious, with many others probably being overlooked as only repetitious repeats from citizens in almost every State of our Union. However, even hundreds of form letters to F.C.C. Chairman Powell can serve their purpose under several aspects. First, the overwhelming swell of similar submissions should show the Commission staff that even if articulation isn't a strong suite for the majority of informal filers, they will nevertheless colloquially express their displeasure with the current ownership framework. Second, for each person that did comment in one manner or another (either raw remarks or form filings) against consolidation and the dismal state of the broadcast industry, there is easily and unquestionably a thousand more souls that feel the exact same way, yet negligently did not choose to convey themselves

The Department for Professional Employees, AFL-CIO ("DPE")(10/3/02) ex parte notice from a Commission meeting on September 19, 2002, includes portions of the 1970 Newspaper Preservation Act, a pair of articles authored by Frank Blethen, Seattle Times CEO and publisher, plus a discussion outline of the rendezvous. Since this eight page document appears scanned out of sequence, Hodson will use Acrobat page numbers for citation purposes. "There is little competition and diversity in local

media news and information markets. Co-owned media outlets...[and e]liminating the newspaper/TV cross-ownership rule...would reduce viewpoint diversity.” (page 2). “Current media market conditions characterized by concentration and consolidation in the hands of national media conglomerates reduces diversity, localism, and quality journalism. Eliminating the newspaper/TV cross-ownership ban in local markets would accelerate this trend.” (page 3). “[T]he separation of TV and newspaper ownership in local communities [is] vital to preserve multiple sources of news and a diversity of community voices. [A]ll of us who care about the role quality journalism plays in ensuring a healthy and free society need to start a vigorous dialog...to save an independent press and a diversity of opinions. We should start by insisting that the FCC keep its cross-ownership ban.” (page 6). DPE’s follow-up (11/15/02) letter, joined with 13 other entities to earnestly request and promote field hearings. “We urge the FCC to go the extra mile to assure the broadest public participation in what will likely be viewed as one of the Commission’s most far-reaching regulatory actions in its history.”(Acrobat page 2). DPE’s (12/10/02) next ex parte notice attached a evaluation report, Democracy Unhinged: More Media Concentration Means Less Public Discourse...A Critique of the FCC Studies on Media Ownership, by Dean Baker, that was disappointingly scanned incorrectly and missing almost every other page. Hodson has already commented extensively on these twelve MOWG Studies (see Section III, *supra*), but will note many commentators treated these studies with open suspicion and skepticism regarding results and methodologies.

MMTC teams with NABOB (10/10/02) to rehash minority ownership issues, advance attribution rule reversal arguments from *NPRM*’s Footnote 13, cover certain other omnibus *NPRM* oversights and errors, and plead for five Section 257 Studies to be placed within this proceeding’s record for comment. Hodson, as a general rule, supports MMTC’s positionings, because small businesses and gender/ethnic businesses are usually considered together when addressing minority entities or companies overall. You could quite honestly say MMTC fights as hard for the little broadcaster as NAB fights for the big broadcaster. MMTC, amongst several noted ex parte appearances, also prepared various other submissions for consideration. MMTC’s Background

Materials: Omnibus Media Ownership Proceeding Stakeholders Meeting (11/5/02), covered essentials for the early November get-together throughout ten Tab Sections. Agenda, Attendees List, F.C.C. Press Releases, Cross-Ownership History (1950-present), Summary of 112 *NPRM* and Additional Research Questions, Market Entry Barriers Policy Forum Summary, Telecommunications Ownership Diversification Act of 2002, and Minority Ownership Solutions, were all well encapsulated for even those whom did not make the meeting. The F.C.C.'s 13-page Executive Summary on Market Entry Barriers (TAB 7) Hodson found interesting, informative, and can easily understand why MMTC has strongly been pushing the Commission to incorporate these five Adarand §257 Studies into the proceeding for comments. Again, another example of MMTC looking out for the little guy. Hodson was very disappointed and displeased that the F.C.C.'s own analysis documented capital discrimination among minority applicants, yet leaves these applicants with only two license achieving methods, via a Commission auction (whenever, see Section VI, *infra*) or purchases on the secondary market. Both options are financially driven, which would (at minimum) make the Commission a "passive participant" in discriminatory monetary-based practices. Congress is beginning to finally recognize its intent with the 1996 Act has not been met, by proposing various bills (S. 2691, see Section IV, *supra*; S. 3112, offered partially within MMTC's instant filing) attempting to rectify legislative errors. Unfortunately, bills like these take a political back seat to bills considered more urgent to the Nation (i.e. homeland security, war with Iraq, economic stimulus, etc.). MMTC's follow-up (11/13/02) submission contained a review of the U.S. Department of Commerce meeting from November 2002, plus five attached exhibits. Although the majority of appendices were agenda or attendee updates, Hodson found Exhibits 4 and 5 worthwhile and practical. Exhibit 4, restricted to inquiring about Chicago network broadcast television in 1962, nevertheless gives strong support for Commission field hearings and their numerous public input benefits. Exhibit 5 promotes common sense principles to discourage agency prejudices and presents a recommended outline procedure that can prevent stereotyping minority businesses or individuals.

Media Access Project's ("MAP")(10/21/02) *ex parte* meeting with the

Commission on October 16, 2002, voiced concern about the twelve MOWG Studies and its underlying data, plus the numerous issues the *NPRM* announced but does not accurately address. MAP and its public interest constituents also suggested again to Commissioner Copps about country-wide field hearings for further verbal comment from the general public on various *NPRM* issues. The Communications Workers of America (“CWA”)(10/31/02) also desire field hearings, stating “...the issue of media ownership and its market structure is far too important to leave to formal comments alone.” (Acrobat page 3). REC Networks (“REC”)(10/28/02) offers some excellent points with LPFM, “distant” translators, and ownership limits for non-commercial stations that deserves a thoughtful Commission reread. REC tactfully observes certain non-commercial abuses that would undoubtably provide much more spectrum availability if corrected. Satellite feeds for translators, some up to “3,000 miles away from the primary station”(page 2), should be discontinued. Loopholes like this is exactly why all translators need reevaluation. If the Commission would have done this a decade ago, there would never have been the strong outcry for LPFM service. REC Chart 1 depicts one-third of all translators licensed are owned by only eight entities. If your primary signal is out of state and over 500 miles distant, Hodson seriously submits a translator or booster, whether commercial or non, should be steadfastly refused for license. When the Commission hand-slaps or winks about satellite fed programming thousands of miles away, it’s no wonder a translator abuse epidemic has ensued. Nickolaus Leggett (10/28/02) has additional comments of synergistic impacts and effects, emerging social and political issues, “open-microphone” broadcasting, and Citizens Broadcasting Band (CBB)(page 5). Hodson has just two questions. Does Mr. Leggett also support MMTC’s channel bifurcation and “Free Speech Radio” proposal? Where was Mr. Leggett during the social and political upheaval of the 1960's? Mr. Leggett (11/15/02) again comments, this time for broadcasting private ownership legitimacy and small entrepreneur commercial broadcasters. He notes that “We have a situation in broadcasting where there are almost no small entrepreneurs operating over-the-air facilities.” (page 2). [T]he Commission should proceed with alternative means for providing opportunities for very small broadcasters.” (page 4).

William Levant (11/5/02) in PA, observes “...only one commercial FM station licensed to Philadelphia is still ‘independent’ and not owned by one of the large group operators...the entire commercial FM dial, save one station, is owned by just five group operators. [T]here isn’t much variation in what you hear any more...most stations in town sound like each other. Consolidation has proven itself to be completely CONTRARY to the public interest.” (page 1). Lawyer Ward (11/27/02) in MO, reasons “It seems to be morally wrong to prevent so many from participating in what is such a limited commodity.” (page 1). Gregory Wood d/b/a/ Mediavox (12/5/02) dissects the MOWG Studies and then raises a substantial number of questions on his own. “[T]he industry as a whole must understand that its licenses are provided to them as part of the public trust, and the associated *quid pro quo* goes well beyond the dollars each pays to use their particular portion of the electromagnetic spectrum.” (page 2). “[T]he Commission wrongly views the people of the United States first as consumers, then as citizens. This, of course, is not anywhere near the intent of the Founding Fathers of this great nation, nor should the FCC allow the very large broadcast media industry to control the agenda and to invert the Commission’s civic priorities and responsibilities.” (page 3). “[I]f the American public is to hold faith in the Commission that it is there to advance First Amendment values in support of an informed citizenry as key to a strong democracy, then the Commission must make a sincere and distinguished effort to collect as much data as possible,...and take as much time as necessary so that our voices may be heard.” (page 7).

John Shaw (1/2/03) in NY, suggests that “[T]he development of the Internet does not obviate the need for local ownership rules. The Internet should not be considered to be a ‘voice’.” (page 1). “The Commission should not weaken its local media ownership and broadcast station and newspaper cross ownership regulations.” (page 2). Gregory Buck (1/2/03) in IN, e-mails “[G]ranting the ability of a business to own both a television station and newspaper in the same community would lay the ground work for many communities having a thoughtless homogeneity of opinions. Increased media consolidation would leave no room for the invigorating divergence of perspective and opinion that we need in order to make well informed decisions. At

every level, including the local level, we need the balance of variety, not just a few barely distinguishable perspectives.” (page 1). Larry LeSueur (1/2/03) in GA, also e-mails “...the media outlets have exploded in number, and their control has shrunk to the hands of a powerful few.” (page 1). Mr. LeSueur then outlines seven requests to the Commission and further asks, “Are the interests of the American citizenry as a whole of secondary concern when pitted against the bottom-line of a tiny handful of corporate special interests? [W]ill the FCC choose to abdicate its responsibility to the American public and bow to those corporate special interest groups?” (page 2). Almost sounds like the end-of-episode inquiries from the 1966 “*Batman*” television show, featuring Adam West & Burt Ward!

The Caucus for Television Producers, Writers & Directors (“CTPWD”) (12/19/02) returns with a strong and convincing rebuke of Mara Einstein’s MOWG contribution, Program Diversity and the Program Selection Process on Broadcast Network Television. CTPWD avers this study had an inadequate diversity definition, omitted critical information, credible testimony paucity, lacked historical perspective, neglected new manipulation trends in entertainment and news, failed to identify independent suppliers, preferential treatment undermining competitive markets, extracted rights for conditional access, modern predatory practices, and ingrained conflicts-of-interest growth. That’s just the subsections without even providing any content. Hodson found this pleading very typical of the overall MOWG Studies incredulity. Innovative CTPWD quotes include, “Absent the creative spark of entrepreneurially driven small business owners, the engine of American democracy will sputter.” (page 7), and “Robust competition has been choked off by the intertwined tentacles of merged media empires.” (page 9).

The Writers Guild of America, west (“WGA, *et al.*”)(1/2/03), teams with the Producers Guild of America, Shukovsky English Productions, John Wells Productions, Bungalow 78 Entertainment, Oh Shoot Productions, Gideon Productions, and UBU Productions for a joint statement. “The decade since the disappearance of the financial interest and syndication rules has seen a reshuffling of the entertainment industry with the end result that independent entrepreneurs have been all but completely shut out of

the program supply process.” (page 6). “The public airwaves are quickly headed for complete domination by a handful of mega-corporations that are both vertically and horizontally integrated and which serve to limit both diversity and competition.” (page 7). “Threatened with extinction in the wave of consolidation...by...haphazard loosening of media ownership rules are the already endangered values of independent entrepreneurship and open competition.” (page 9). “While the FCC cites the existence of ‘230 national cable programming networks,’ there are just 91 networks that can be considered ‘major’ networks. Of these 91 networks, fully 80 percent (73 networks) are owned or co-owned by just 6 corporate entities (AOL Time Warner, Viacom, Liberty Media, NBC, Disney, and News Corporation). [F]ive of these six corporations are the very same entities that dominate the program production market for broadcast television programming.” (footnotes omitted)(page 10). “[W]e hope that the Commission will recognize that freer and more open competition serves the public at large.” (page 11). “The evidence is overwhelming that there has been a massive concentration of power in the hands of a few giant corporations who now control the vast bulk of programming in prime time both in broadcast and cable television.” (page 17). WGA, *et al.*, strongly supports retaining the Dual Network Rule, considers Internet, audio services, and newspapers distinct media markets from television, and firmly criticizes the accuracy of the twelve MOWG Studies.

Cox Enterprises (1/2/03) mainly focuses on the newspaper/broadcast cross-ownership and the 35% national ownership cap regulations, yet desperately attempts to position themselves as supporting localism, considering Cox is an oversized national player with their many diversified interests of television, radio, cable operator, newspaper, and Internet service provider. Because Cox owns 41 newspapers across the country, and in the Dayton, OH & Atlanta, GA markets have newspaper/television combos already (page 3), it is not difficult to figure out why their agenda promotes repeal of the newspaper/broadcast ban. Although they adamantly cry local - 28 times on page 4 alone - saying and doing are always two distinct propositions. Cox’s counsel adequately researches “localism”, but only because their main barrier from the national broadcast networks is that Cox does not yet have capabilities to produce video

programming, but only to distribute it via their rather large platforms and venues in multiple markets. A company like this will continue to plead localism, but instead buy up other broadcast assets at the first opportunity, fueling the overprice firestorm in their unquenchable quest to grow into more markets, while ignoring efforts from smaller and minority businesses just trying to get their foot in the secondary market license door. Under Section II. B. (pp. 20-23) and Appendix A, Cox does a worthwhile job taking the conglomerate heat off themselves and instead depicting unfavorably the broadcast networks' expansive programming and cable reaches. Cox quotes *Fox, supra* in footnote 147 (280 F.3d at 1047): "...Congress may, in the regulation of broadcasting, constitutionally pursue values other than efficiency - including in particular diversity in programming, for which diversity of ownership is perhaps an aspirational but surely not an irrational proxy." (page 60).

The National Organization for Women ("NOW")(1/2/03), although listed as UCC *et al.* by the F.C.C.'s scanning staffer, also had worthy input. "NOW believes that promoting ownership opportunities for minorities, women, and small businesses is an important policy goal that should be an explicit objective of this proceeding...[and] advances the goals of diversity, competition, and localism." (page 2). "[O]wnership limits help promote diversity of ownership by preventing increased barriers to entry caused by consolidation." (page 8). Verizon (1/2/03) analytically discusses §§11 and 202(h) biennial review standards without addressing specific media ownership policy questions, thoroughly defines the word "necessary" under many instances, and dutifully provides enough citations to keep any paralegal busy for a good while. Buckley Broadcasting (1/2/03) offers "[A]ny rule changes should take into account the harm that can develop if dominant players in different media are allowed to combine." (page 2). "The strong substitutability between radio and television advertising in *smaller markets* supports the continued limitation on radio/TV cross ownership." (*italics added*)(page 3).

The American Federation of Labor and Congress Of Industrial Organizations ("AFL-CIO")(1/2/03) consortium comprises 65 member unions, including AFTRA, CWA, NABET, CWA Newspaper Guild, WGA-East, and DPE. Their pleading

submits that the Commission's twelve MOWG research reports contain many flaws which make them unreliable, and that other conglomerate commissioned studies are bias and subjective. AFL-CIO asserts various newspaper chain anecdotes that firmly show that with corporate takeovers, publishing moguls quickly reduce staff, suppress select stories, seek profit motives, and reduce community interests (footnote 61 and related text). AFL-CIO also documents many egregious examples of Clear Channel demonstrating anti-competitive practices. "[N]ew media outlets are simply not yet used as a news and information source by a significant number of Americans and cannot be seen as voices equal to the traditional radio, television and newspaper outlets for purposes of evaluating diversity of viewpoints in the marketplace." (page 13). "It is undeniable that media ownership influences, shapes and controls the content and quality of news and other programming delivered to the public to a degree and in a manner clearly at odds with the public interest." (page 23). "During the last tornado, it was impossible for the people in the town to find out the location and track of the dangerous storm on their single local radio outlet because all of its programming was delivered from Atlanta, Georgia." (page 28). "As was true fifty years ago, most Americans still get their local news and information from their daily newspaper and one of a handful of broadcast television stations." (page 34). "[T]here is a very real danger inherent in encouraging even fewer voices by permitting the co-ownership of newspapers and television." (page 40). "Owners of several properties in a market, such as radio, television, and cable stations and a newspaper, can offer advertisers a broad customer reach with which competing media companies that do not control different outlets cannot compete. (pp. 49-50). "[W]hile the expectation for combined networks was that one network would market to the mainstream audience and the second network would be free to cater to niche or minority communities, this result has not materialized. (footnote omitted)(page 62). Although the first ECFS portion (Acrobat: 70 pages) of AFL-CIO's comments seem to prematurely and abruptly conclude, the second portion offered token reparation by completely scanning, Democracy Unhinged: More Media Concentration Means Less Public Discourse...A Critique of the FCC Studies on Media Ownership, by Dean Baker, which was not correctly done so in

DPE's ex parte notice attachment from December 10, 2002.

Children Now, along with the American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American Psychological Association, Action Coalition for Media Education, Center for Media Education, Mediascope, National Association of Child Advocates, National Institute on Media and the Family, and the National PTA ("Children Now, *et al.*") (1/2/03), filed comments to promote juvenile media concerns. "[T]he Commission should not expand the radio-TV cross-ownership rule's definition of voices to include any other types of media outlets, because these alternatives fail to contribute meaningfully to viewpoint diversity and localism for children." (page 3). "Recent research indicates that minority broadcasters believe that the 1996 Telecommunications Act and subsequent media consolidation have eliminated the opportunities for small entrepreneurs." (footnote omitted)(page 8). "Children's heavy reliance on broadcast TV, to the exclusion of other media, makes the ownership rules particularly important to this population group." (page 10). "When repurposed programs replace original programming, there is an inevitable reduction in diversity." (page 14). "[H]istory has demonstrated that the market alone cannot be entrusted to meet children's programming needs." (page 17). "Prioritizing merchandising possibilities over the cognitive or social merits of a program will greatly jeopardize the quality of programming for children and expose them to the detrimental effects of commercialism." (page 22). "[A] youth-conducted community survey of KMEL 106.1 (a Clear Channel property in San Francisco Bay Area market with a daily listenership of 600,000) found that the station routinely excluded community youth organizer voices, neglected to present policy discussions affecting youth and people of color and focused on crime and violence in its news coverage. The findings of the KMEL survey bolster observations of academics and advocates who have reported that upon acquisition of local radio stations, large companies standardize program content, reduce local programming and increase advertisements." (footnotes omitted)(page 28).

CWA (1/2/03) returns with related petitioner entourage to add color to its already established positions. "The Commission must protect against combinations that would reduce the number of independently-owned television stations in a local market;

the number of independently owned newspaper(s) and television stations in a local market; and the number of independently-owned national broadcast networks to ensure the widest possible dissemination of news and information.” (page 5). “[D]aily newspapers, local television, radio, cable, and the Internet are separate local media product markets, with weak substitution by consumers and advertisers.” (page 8). “[C]areful market definition and a market power analysis that analyzes market share, not simply the number of outlets, leads to the conclusion that daily newspaper markets are in fact highly concentrated markets.”(page 26). “[T]he evidence demonstrates that combined television stations or cross-owned newspaper/broadcast combinations reduce the number of independent voices in a local media market.” (page 33). “[T]he local television ownership rule, the radio/TV cross-ownership rule, and the local radio ownership rules protect and preserve the possibility of diverse voices, competition, and local identity.” (page 46). Duhamel Broadcasting (1/2/03) relates “It is also time for the Commission to recognize that the free, over-the-air television and radio broadcast industries, with only a single source of revenues - advertising - are, therefore, the most fragile of all these mass media delivery technologies.” (page 6). “If this quest were truly genuine, logically the government would require cable operators, television satellite operators, and satellite radio operators to place each of their programming channels in separate ownership hands.” (page 7).

The Network Affiliated Stations Alliance (“NASA”), filing several submissions throughout the overextended comment window(s) for this omnibus proceeding, joins with the National Association of Broadcasters (“NAB”)(1/2/03) to particularly plead that the Commission hold both its Dual Network and National Television Ownership Rules intact. NAB does refrain from certain arguments and does not obviously endorse the entire petition. “[C]able operators and DBS carry multiple cable networks that offer alternatives to the national programming of broadcasting networks, but currently carry limited local programming as compared to broadcast-network affiliates.” (page 14). “Broadcast television remains the only medium that provides a *free*, over-the-air, local video programming service to virtually all Americans.” (page 78). The Coalition for Program Diversity (“CPD”)(1/2/03) includes AFTRA, Carsey-Werner-Mandabach,

Directors Guild of America, Marian Rees Associates, MediaCom, SAG, and Sony Pictures Television. CPD's strongest advance is what they call the "25% Independent Producer Rule", which without going into detail, Hodson supports. "[T]he contrast between households that can afford to pay for cable and satellite subscriptions is staggering when compared with households that only have access to free advertiser supported network programming." (page 12). "This strategy to maximize network profits at the cost of diverse, quality network produced programming unfortunately also costs the American public, who has the same program in different time periods, as opposed to the preferable opportunity, where the viewer has access to different and diverse programming at all times of the day." (page 22).

Thomas Smith (1/2/03), a 33-year broadcast technician in WI, writes "Innovation in broadcasting has not been from the largest broadcasting companies, but from the smallest that were struggling to survive." (page 7). Jay Messersmith (1/3/03), a 34-year broadcaster, states "[S]ince the rules on media ownership have changed, I feel that the public interest is being served to a much lesser degree. I strongly urge you to consider how three or four corporations have recently been allowed to dominate it, without any interest in being stewards for the public trust." (page 1). Marian Alfoldy (1/16/03), former Clear Channel staff member in OH, chimes "While employed (2 years) I saw advertising rates rise 3 times. [T]hey are striving to move a 50,000 watt station from our small community, (where it had been a source of local information for the community for over 45 years,) to a market covered by the Columbus area. The community is suffering from the doings of this corporation. The localness is gone as voice-tracking takes over." (page 1).

After reviewing the entire ECFS compilation for this docket quartet, three things were quite noticeable. First, the Commission or any review Court cannot argue that the record is unsubstantial or incomplete. Anybody and everyone has had ample time to present their perspective, even if only an informal overview brief, toward this proceeding without prejudice. Second, an overwhelming percentage of commentators, whether an individual or non-corporate counseled entity, positioned themselves to firmly support less cross-ownership across mass media platforms and immediate

conservative modification of Commission policy, opposed to repealing or relaxing broadcast regulations. Lastly, the Commission's ECFS database could desperately use an information overseer or scanning troubleshooter. Understandably, we are all human and prone to make errors; however, it was not uncommon to find submissions under one docket number recopied twice or thrice, and on a few occasions, even four times in a row, while researching just the four listed dockets for this particular proceeding. There were files inputted which the left hand part of the text on every page was illegible, others where data was obviously cropped from the top portion of the page, and many more that were either slanted at an angle (such as CPD's [1/2/03] most recent petition) or the document type was mislabeled, because somebody wasn't paying attention while scanning pages into the system. One eight page filing from Graydon Manor School (10/15/02) for a review request in CC Docket Nos. 96-45 and 97-21, was actually categorized as a Clear Channel submission for MM Docket No. 00-244. Amsat's (12/11/02) proposal to modify §97.207(g) of the Commissions Rules, was errantly listed in MM Docket 01-317 as a Media General filing. Although Hodson rarely participates in most docketed proceedings, it has also found similar dissatisfaction in the fashion that this company's documents have been handled by the Commission's staff. As another excellent example, a pleading by Hodson, prepared March 15, 2002, in MM Docket No. 01-135, was originally ten pages in length. After system scanning, this same submission became 21 pages, as the scanning staffer on March 26<sup>th</sup> inattentively double inputted the entire motion, save the cover letter. Hodson viewed the discussed document online through the ECFS, and found the resulting procedure quite deplorable!

## **VI. Additional Initial Regulatory Flexibility Analysis**

The *Initial Regulatory Flexibility Analysis* again readdresses various designated entity issues, including the possible significant economic impact on small businesses by Commission policies and rules proposed in Section IV, Policy Goals (diversity, competition, and localism), Section V, Local Ownership Rules, and Section VI, National Ownership Rules. The Regulatory Flexibility Act (5 U.S.C. § 603) requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may, among others, include the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

Hodson meets the established criteria to be regarded as a small business concern as defined by the Small Business Act<sup>23</sup> and provides evidence through a brief reintroduction of the company. Hodson Broadcasting was first formally founded as a sole proprietorship, by Richard Dean Hodson in March 1997, through a Certificate of Business filed in the County of Clark, State of Nevada. In August 1997, Hodson bought a Collins ten kilowatt FM transmitter from KWLX Radio in Louisiana. After another 18 months of rigorous radio broadcast research, which included a F.C.C. trip through Washington D.C., Hodson filed with the Commission for an allocation in Tecopa, California in December 1998.<sup>24</sup> Channel 291A was added to the FM Table of

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<sup>23</sup>Hodson is independently owned and operated, not dominant in its field of operation, and satisfies any and all additional Small Business Administration criteria. It should be strongly noted that the current North American Industry Classification System Code 513112 (13 C.F.R. § 121.201) defining a radio broadcasting station that has \$5 million or less in annual receipts as a small business needs modification to \$4 million or less in receipts to more accurately reflect realities within the smaller radio markets.

<sup>24</sup>MM Docket No. 99-46, RM-9470, 14 FCC Rcd 2829 (1999).

Allotments for the community of Tecopa effective August 1999.<sup>25</sup> In the interim, Hodson registered with the City of Las Vegas in April 1999 for a home-based broadcast business and was issued a license. In February 2000, the Clark County Board of County Commissioners (CCBCC) approved Hodson for a two-year, special use, construction permit, with both waivers and variances, to develop private family property located in Sandy Valley, Nevada, as a start-up studio site for broadcast operations. However, because of untimely and unjust federal regulatory delays beyond Hodson's control, the CCBCC Extension of Time application filed in February 2002, on the *supra* permit decision was rejected, and thus four percent of the entire project's current capital funding was forfeited on the endeavor. As of January 24, 2003, Hodson *continually prays* and patiently awaits for F.C.C. action, which involves opening the FM Broadcast Auction filing window, already postponed on several occasions for all vacant allotments. Included is the Tecopa allocation approved more than three years ago, via Hodson's Petition for Rulemaking and subsequent Comments, expressing required continual allocation interest, proof of community issues, and interminable notion to file, whenever the Commission determines that milestone should occur.

The Commission is fully aware of various obstacles facing FM allocation petitioners, including satisfying minimum distance regulations, proving community status, and a scrutinizing public comment window. Hodson has overcome each of these barriers to entry as documented, but is still quite far from meeting its divine calling. Because of the Commission's competitive bidding principle superseding comparative hearing procedures, Hodson has been waiting, along with approximately 360 other interested parties, for an opportunity to bid on their hard-earned allocations. What is such a shame is when a sole proprietorship petitioner, without any attorney assistance, struggles *so hard* and sacrifices *so much* for *so many* years, yet after the entire effort and energy expended, the primary party of interest for a particular allocation is no closer to gaining channel privileges or constructing authority than they were at the onset of their broadcast project. For Hodson, the initial decision to build over buy was

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<sup>25</sup>Report and Order, DA 99-1375 (released July 16, 1999).

originally envisioned in early 1990, already now *thirteen years* ago!

Hodson understands that after several Public Notices<sup>26</sup> announcing a FM Broadcast Auction #37 schedule, each date specified was vacated, with the last postponement notice void of new datelines. The latter notice's explanation was due to an appealed National Public Radio court decision (see footnote 6) concerning noncommercial educational (NCE) entities competing with for-profit businesses for FM commercial spectrum. The Commission's concern that every auction allocation is potentially impacted is not substantiated. Why? Because a commercial FM auction application window has *never* actually been opened to determine which markets various entities may wish to enter. After Hodson examined the *NPR* brief,<sup>27</sup> the Circuit Court's opinion, both Judge Tatel and Randolph, appeared overly transfixed in the context of §309(j)(2), with the term "issued". Perhaps a better phrasing would be, "...shall not apply to Commission licenses or construction permits-...", omitting the word "issued" entirely. Besides, the Commission has already entertained a trio of non-profit auction options, including revisiting finalized allocations, some of which were decided at least six years ago. Hodson's strongly avers that the Commission should henceforth keep NCE businesses ineligible to file or bid in the commercial FM band, except as currently grandfathered. If the Commission would instead reevaluate noncommercial translators and boosters to be within 500 miles or less of their program origin, and prohibit those that are daisy chained or nationally satellited from region to region, over state lines, or in cities with a population base of 100,000 or more, then there would be vastly more reserved FM spectrum available for locally based non-profits, such that Low Power FM would never have needed creation. When the Commission finally and truly decides to accept FM Auction #37 participant applications and graciously opens the long overdue filing window, it can then readily conclude which markets have "singletons". These singletons can be immediately

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<sup>26</sup>See Public Notices: DA 00-2171 (released September 25, 2000); DA 01-119 (released January 19, 2001); DA 01-619 (released March 7, 2001); DA 01-2148 (released September 14, 2001)

<sup>27</sup>*National Public Radio, Inc. et al. v. FCC, supra*, at 229, 232.

identified, since many of these loner allocations are in unserved or rural areas with under 10,000 population, such as Tecopa, California. These type of allotments could then bypass bidding and move to construction permit application procedures, hopefully hastening certain remote sectors receiving a first aural broadcast outlet, which would undoubtedly be in their communities best public interest.

Hodson again earnestly recommends certain changes concerning the Commission's broadcast auction procedures and modified means with these regulations to assist and enable small, start-up broadcast businesses to effectively compete. First, restructuring the New Entrant Bidding Credits<sup>28</sup> from its current 35/25/15 percentile to just a 45/30 percentile ratio would be quite beneficial for first-time, limited or privately financed, broadcast owners that do not have any medium of mass communication interests, which better defines and serves the Bidding Credit's intention. Other similar suggested alterations would repeal the provision contained in Section 1.2110(f)(2)(iii) of the Commission's rules for the 15% tier. Any business with \$40 million in triennial revenue doesn't require or justify bidding credit adjustments. In the proposed 30% tier, a company could have attributable interest in five or less mass media facilities with each possessing up to \$5 million in annual receipts, on the condition that the winning bidder lacks mass communication presence in the auctioned market. Only those beginning broadcast entities with up to \$1 million in revenues and no market presence whatsoever, would be entitled to the restructured 45% tier and allowed to utilize the installment payment plan codified in Section 1.2110(g) of the Commission's Rules. Second, regarding default criteria,<sup>29</sup> Hodson agrees with current applicant certification and former defaulter statements, but must differ on the 150% down payment as a blanket requirement for all former defaulters as Section 1.2106(a) of the Commission's Rules direct. Instead, if the required statement reflects a previous defaulter has cured outstanding infractions and has remained debt free over a decade,

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<sup>28</sup>47 C.F.R. §§ 1.2110(f)(2) and 73.5007(a)

<sup>29</sup>47 C.F.R. §§ 1.2105(a)(2)(x) and (xi), 1.2106(a)

then the higher upfront payment should be waived.<sup>30</sup>

Because Hodson's *sole mission* in life is to develop and construct a FM broadcast operation, evaluating economic and other impacts from Commission policy and regulation on Hodson's endeavor is revitalizing. There are now about five hundred various vacant FM allotments around the country, with more than half long overdue for a filing window. Before uniform auction filing windows, the Commission would permit commercial FM CP applications to be tendered by a date specified, usually within 90 days. Now three months of waiting easily becomes three years or more, and with such a large number of idle vacant channels, it makes much more difficult the Allocations Branch's duty to evaluate new rulemaking allotment short-spacings, while also honoring finalized requests from former petitioners.

Small business "concerns", whether profit or non, have many similar company issues as do larger, highly capitalized, organizations. A gigantic stumbling block for most small, private enterprise is financial assets, as it is rarely generated through stock options and public trading, but through private and personal capital. Even in overcoming very high barriers for market entry, such as inflated selling prices due to consolidation or spectrum scarcity, especially in the FM commercial band with only 80 non-reserved channels available nationwide, a broadcast entrepreneur still has only two options: buy or build. The current status of many radio markets within the top 100 prohibits new commercial entrants to participate in purchasing an existing broadcast facility, particularly if that entity's capital is less than \$100,000. The construction option within the top 100 radio markets is also riddled with adversity. The lack of quasi-monopolistic spectrum availability in most medium to major radio markets consistently limit and force new broadcast entities to select communities that are usually a minimum of 40 miles or more distant from the market in which they wish to serve. If a start-up business is fortunate enough to have found an area worthy of a new allocation, the distance from market factor usually results in not enough signal strength

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<sup>30</sup>See: *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1228-29, at ¶105. (Commission established applicant misconduct, even if flagrant, should be disregarded when good rehabilitative evidence exists and a decade of time elapsed since incident.)

or advertising revenue to support a fledging radio broadcast operation.

Hodson must disagree with the Commission's general small business categorization assessment of various broadcasting fields. Although the *IRFA* in §C., Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply, utilizes annual receipts as the prominent criteria basis for evaluation, other factors should also be considered. For instance, rationally and realistically assuming company "A" is the licensee of three FM's in any given market, and each station grosses \$4 million, how can the Commission truly justify a trio of small radio broadcasting concerns in this scenario? Hodson sees instead a larger broadcasting business concern which accounts for \$12 million of that example market's revenue. The number of full-time staff could also be a worthwhile size determination factor, perhaps over/under ten as a credible benchmark. The Commission nominally acknowledges several times within Section C that estimates are over inclusive and overstated. An excellent case point is radio broadcasting, where the Commission, using only revenue calculations, project that 96% of commercial radio stations are defined as small business entities. One doesn't have to be a CPA, lawyer, or rocket scientist, to conclude this startling statistic is woefully erroneous.

There is decisively a very distinct division between small "not for profit" broadcast organizations and smaller commercial broadcast ventures, such as sole proprietorship or partnership ventures. Governmental, religious, educational, and other noncommercial broadcast entities have historically always received preferential Commission policy provisions not entitled to their commercial counterparts. Several examples include the recent Low Power FM (LPFM) developments, the entire reserved FM band design, nonrestrictive CP application filings for NCE allotments, and comparative hearings instead of competitive auction bidding requirements. LPFM is a possible solution for only non-profit broadcasting concerns, notwithstanding proven RF interference particulars, and does absolutely nothing to address the small commercial broadcast operator apprehensions of high market entry barriers for newcomers, apathy of incumbent broadcasters on community of license issues and affairs, and reluctance to program or support diversified niche formats for the public

audience, which broadcast licensees are required and responsible to serve.

Significant economic and general impact on small and under-represented business entities by Commission policies and rules proposed, can be dramatically minimized by: increasing competitive bidding assistance to auction participants that are classified broadcast newcomers, hastening pathetic procedural procrastination, modifying small business classification criteria to reflect marketplace realities, and expediting very lengthy delays on various policy matters before the Commission that have been pending after several stressful years, particularly the FM Broadcast Auction # 37. The tremendous impact that radio industry amalgamation has had over the last seven years (since the 1996 Act) on small, independent broadcast businesses and related industries is tragically terrifying. Nevertheless, the Commission has within its jurisdiction and authority, the ability to rectify blatant wrongdoings that are currently overwhelming very small broadcast entrepreneurs.

Hodson has twice answered and addressed the Commission's queries with reasonable and rational remedies of the various issues that the Initial Regulatory Flexibility Analysis confronts. Hodson specifically instructs the Commission candidly through actual hardships that its proprietorship over the years has endured while earnestly striving to make its broadcast endeavor a reality. Please feel free to use Hodson as a prime small business case study. A fair and equitable distribution of individual broadcast licenses according to the public interest, convenience, and necessity is still viably achievable in an ever-evolving, fast-paced, technological generation, by faithfully heeding Hodson's alternate suggestions summarized supra and in the concluding section infra.

## **VII. Conclusion/Summary**

In conclusion, Hodson has provided a combination of potent statistical and convincing anecdotal evidence that practically answers many of the Commission's instant inquiries, with freshly feasible alternatives to the incessant *NPRM*'s revolving redresses, and furthermore replied conscientiously to the MOWG research and additional *IRFA*. A majority of commentators in this perennial proceeding, save large group conglomerates trying to preserve their assets, overwhelming preferred stricter modification of the broadcast ownership regulations rather than repealing them, and retention of other ordinances addressed in this perpetual proceeding, that might have been initially perceived by some as obsolete. Contrary to corporate comments, satellite DARS or Internet radio negligently competes with traditional AM or FM as viable substitutes, just like broadcast television is inherently superior to cable, satellite, Internet or newspaper venues, primarily because availability is financially prohibitive to many minority or misfortunate citizens.

Modifying both local and national radio and television broadcast tier levels, and audience and advertising revenue percentage values as appropriately stated *supra*, permits a greater number of available community and individual viewpoints without consumer charge, broadcast competition flexibility utilizing quasi-monopolistic spectrum, exceedingly important general ownership diversity, plus promotes equality through compromise. Abandoning fiercely flawed and double standard "loophole contour" or "daisy-chain" methodology mentality for multiple source broadcast research and listener/audience information methodology, which can then foundationally create and allow the Commission to maintain its own stabilized market delineation data base, will redefine and rectify radio or television markets that shall more accurately reflect over-the-air signals which are actually receivable within any given geographic region. Local Marketing Agreements, Time Brokerage Agreements, Joint Sales Agreements, and untimely license assignment or transfer applications, are all just various forms of a licensee apathetically trading or selling away their community responsibilities in exchange for financial consideration, thus should be

closely monitored, severely scrutinized, and perhaps even abolished in many cases. Effectively defining a “voice” for broadcast media regulation purposes should certainly include over-the-air (no recurring subscriber fees) and independent - not cross or group owned. Since all media (television, radio, newspapers, cable, satellite, etc.) serve each sector of the populace under certain conditions or for certain purposes, it would be most prudent to regulate while keeping cognizant of those members of society having the least in life. Impoverished citizens and children really demand nothing more from the Commission, remembering that all family incomes are not generated equally.

Since enacting the above policy propositions present divestiture concerns, allowing for a moderate transition grace period for individual license transfers to qualified entities, larger broadcasters can then develop their “exit strategies” accordingly. Since most businesses would prefer some “return on investment”, rather than no return at all, the “T&T” period provides for an allowance to enable group licensees the freedom to sell and transfer individual stations to meet revised regulations, opposed to outright immediate forfeiture of such radio licences. After the “T&T” period has elapsed, the Commission shall recall any remaining, non-transferred radio licenses for a Radio Broadcast Divestiture Auction, conducted similar to a standard OPEN broadcast auction proceeding, which for commercial FM is disgustingly and disturbingly way overdue. Almost 500 FM Allotments, over 350 of them already identified for auction, are patiently and endlessly awaiting their bidders. Meanwhile, the Commission questions why market barriers to entry for smaller businesses, a constant cry for competition, and lack of new service to rural areas have become inflamed issues. Never before in F.C.C. history, has a single conglomerate been permitted to control over 1,200 individual commercial radio broadcast licenses (Clear Channel), or flirted with the regulatory idea of traditional television broadcast networks merging, which would clearly reduce over-the-air television diversity choices for those which do not have or cannot afford cable or satellite access. General “free” broadcasting (especially FM radio) spectrum scarcity makes this professional or occupational field quasi-monopolistic by nature and thus prohibits unlimited competition and diversified voices within any particular local market.

Realizing forced divestiture is considered an extreme, yet rational remedy, Hodson again draws to the Commission's attention that after the Justice Department divested the AT&T phone monopoly by Consent Decree in January 1982,<sup>31</sup> the historic Bell breakup created a healthier, more robust and diversified local telephone and long distance environment, enabling numerous entrant opportunities for different phone service provider companies, and further allowed consumers and customers flexible new choices in phone purchase and POTS feature options.

Respectfully submitted,

*Richard Dean Hodson*

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January 24, 2003

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<sup>31</sup>*Ma Bell's Big Breakup*, Newsweek, 18 January 1982, pp. 58-59; See also: *Broadcasting and Cable Yearbook 1992* (New Providence, NJ: R.R. Bowker, 1992), p. lxxv.